IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL S. LEWIS,	§
	§ No. 167, 2012
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0706015657
	§
Plaintiff Below-	§
Appellee.	§

Submitted: May 22, 2012 Decided: June 1, 2012

Before STEELE, Chief Justice, JACOBS and RIDGELY, Justices

ORDER

This 1st day of June 2012, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Michael S. Lewis, filed an appeal from the Superior Court's March 5, 2012 order denying his motion for sentence modification pursuant to Superior Court Criminal Rule 35(b). The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior

Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

- (2) The record before us reflects that, in February 2008, Lewis pleaded guilty to Delivery of a Controlled Substance, Maintaining a Vehicle for Keeping Controlled Substances and Aggravated Menacing. He was sentenced to 13 years of Level V incarceration, to be suspended after 2 years and successful completion of the Greentree Program for 1 year Level IV Residential Substance Abuse Treatment Program, followed by 18 months at Level III Aftercare. Thereafter, he unsuccessfully sought modification of his sentence and postconviction relief.
- (3) In 2009, Lewis was dismissed from the Greentree Program. The Superior Court ordered Lewis to undergo a mental health evaluation at the Delaware Psychiatric Center ("DPC"). After four months, Lewis was returned to prison to await review of his sentence. Following receipt of the evaluation, the Superior Court scheduled a sentence review hearing and ordered that counsel appear on behalf of Lewis and the State.
- (4) At the hearing, the judge noted that, during the four months

 Lewis had spent at DPC, he was defiant, disruptive and threatening to

 himself and others. The DPC expert diagnosed him with a personality

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¹ Supr. Ct. R. 25(a).

disorder that rendered him unsuitable for psychiatric hospitalization. Moreover, the DPC expert opined that Lewis was unlikely to cooperate with any programming that might benefit him and recommended that he be returned to prison. Lewis's counsel requested that Lewis be released to Level IV Home Confinement. The State requested that he be returned to Level V incarceration.

- positions, the Superior Court re-sentenced Lewis, effective April 4, 2008, to 5 years at Level V on the delivery conviction, 5 years at Level V on the aggravated menacing conviction, and 3 years at Level V, to be suspended upon successful completion of the Greentree Program for 3 years of Level III probation, on the conviction of maintaining a vehicle. Lewis did not file an appeal from the Superior Court's re-sentencing. In the Superior Court's denial of his latest request for sentence modification, the judge stated, "I am reluctant to revisit the [sentencing] order . . . unless I have evidence of true change. . . . I am not currently convinced that I should modify his sentence."
- (6) In his appeal, Lewis claims that he has provided the necessary documentation, consisting principally of prison program certificates, demonstrating that he has "changed" and supporting his release to Level IV

Greentree Program. He argues that the report from DPC may have been

"exaggerated."

(7) Rule 35(b) provides a 90-day time frame for sentence

modification. Outside of that time frame, motions for sentence modification

will be granted only where the defendant can show "extraordinary

circumstances." Lewis has provided no support for his argument that the

DPC report was "exaggerated." While Lewis may have made progress

towards his goal of true change, we find no abuse of discretion on the part of

the judge in determining that he has not yet reached that goal.

(8) It is manifest on the face of the opening brief that this appeal is

without merit because the issues presented on appeal are controlled by

settled Delaware law and, to the extent that judicial discretion is implicated,

there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to

affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely

Justice

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